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Supreme Court, U.S.
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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

ALEXANDER DAMASCUS D.D.S.,
Petititoner,

-versus-

PATTY BORGIA et al, Respondants

PETITION

FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ALEXANDER DAMASCUS D.D.S.
259 MERIDIAN #10
SAN JOSE, CALIF. 95126
(408) 241-7123

PETITIONER IN PRO PER

QUESTIONS PRESENTED

1. WHETHER U.S. DEPT. OF HEALTH AND HUMAN SERVICES AGENTS CAN SUE DAMASCUS WITH UNDERCOVER AGENTS IN STATE COURTS AND COMMIT FRAUD IN CONCEALING THEIR IDENTITIY.

2. WHETHER THERE CAN BE A REASONABLE EXPECTATION OF PRIVACY FOR DAMASCUS, FOR THE PURPOSES OF THE FOURTH AND FOURTEENTH AMENDMENTS, WITH RESPECT TO GOVERNMENT AGENTS FRAUDULENTLY ENTERING HIS BUSINESS AS UNDERCOVER DENTAL ASSISTENTS AND PATIENTS WHILE RESTRAINING OTHER INCOMING BUSINESS THROUGH ABUSES OF FEDERALLY COURT ORDERED TELEPHONE SURVEILLANCE, BEFORE ANY JUDGEMENT HAS BEEN RENDERED AGAINST DAMASCUS IN ANY COURT OF LAW.

3. WHETHER AGENTS CAN LIMIT DAMASCUS'S ABILITY TO FIND AND AFFORD AN ATTORNEY BY ACTING AS LAWYERS HE WAS ATTEMPTING TO CONTACT SUPPOSEDLY FOR THE PURPOSES OF SOME UNDISCLOSED CRIMINAL INVESTIGATION.

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California Constitution (1985) 37 Cal.3d
873, 879.). 21.

Cal v.Krivda and Katz v. U.S.389U.S.347 .
21.

v.

THESE decisions give rise to a reasonable expectation of privacy. established by the U.S. Supreme Court U.S. v. Jacobson 80 L.Ed.2d 85,103,104 S.Ct.1652,1661(1984) " (Id.,104 S.Ct. 1661) Moreover, "it would be merely tautological to fall back on the notion that those expectations of privacy are legitimate ydepend primarily on cases deciding exclusionary-rule issues in criminal cases.""Legitimation of expectation of privacy by laws must have a source outside the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are that are recognized and permitted by society."(Id.,104S.Ct.1661) 16, 22.

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INTRODUCTION

ALEXANDER DAMASCUS D.D.S. ACTING IN PRO PER FILED A PETITION FOR REMOVAL FOR REMOVING A STATE SUPERIOR COURT CASE IN WHICH NANCY HASSE WAS SENT TO DAMASCUS'S OFFICE BY THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR THE PURPOSES OF INVESTIGATION TO STAGE A DENTAL MALPRACTICE COMPLAINT WITHOUT DISCLOSING THAT SHE WAS PART OF A U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES AGENT.

HASSE IS ALLEGED TO HAVE COMMITTED FRAUD AND ALLOWING THE COMPLAINT TO REMAIN IN STATE SUPERIOR COURT DEPRIVES DAMASCUS THE RIGHT TO A FAIR TRIAL BECAUSE THE STATE COURT LACKS COMPETITENT JURISDICTION, AND THE THREAT OF A MOCK TRIAL WITHOUT DISCOVERY OF FEDERAL COURT ORDERS FOR SURVEILLANCE OF DAMASCUS'S OFFICE DURING AND AFTER APPOINTMENTS MADE TO DAMASCUS OFFICE.

JURISDICTION

DAMASCUS AS APPELLANT FILED A TIMELY PETITION FOR REHEARING EN BANC WHICH WAS NEVER DISTRIBUTED TO ALL ACTIVE JUDGES IN THE NINTH CIRCUIT YET ON AUGUST 19.1987 THE COURT ISSUED AN ORDER DENYING IT AS A "MOTION FOR RECONSIDERATION" AFTER A SINGLE JUDGE SNEED VIOLATED F.R.Civ. 27(c), ALLOWING AN UNPRESCIDENTED LIMITED REMAND, ORIGINALLY ORDERED BY A MOTIONS ATTORNEY.

CERTIORARI JURISDICTION EXISTS PURSUANT TO 28 U.S.C.§§ 1254(1). 90DAYS TIME PERIOD.

CONCEALMENT OF FACTS AND FRAUD

commited by THE U.S. DEPART. HEALTH AND HUMAN SERVICES USING PATIENT Hasse and her expert witnesses allegedly associated with Respondants deprive DAMASCUS the ability to expose the federal nature of the sham Superior Court cases NECESSARY FOR A PETITION FOR REMOVAL. Utah v. Livsey (1970, D.C. Utah) 312 F Supp 1397.

DAMASCUS DID NOT RECIEVE A COPY OF LOWER COURT JUDGE JENSENS LETTER TO THE NINTH CIRCUIT ASKING THE COURT TO CHANGE IT'S ORIGINAL ORDER AFTER THE APPEAL WAS FILED FOR THE UNREMANDED PETITION FOR REMOVAL.

FURTHERMORE DAMASCUS DISCOVERED THAT DAMASCUS' INTERLOCKATORY APPEAL 86-8045 ON DAMASCUS'S COMPLAINT TO TERMINATE ABUSED TELEPHONE SURVEILLANCE WAS ABUSED BY JUDGES OF THE NINTH CIRCUIT TO FURTHER VIOLATE DAMASCUS ATTORNEY-CLIENT PRIVILAGE AND LISTEN TO RECORDED TELEPHONE CONVERSATIONS FOR THE PURPOSE AS AFFIRMING A COMPLAINT AS FRIVILOUS DISMISSED PURSUANT TO 12(b)6 WITHOUT ALLOWING DAMASCUS ANY DISCOVERY OF INVESTIGATIONS CONDUCTED UNDER COVER AND UNDER COLOR OF LAW.

Petitioner cited BIVENS:"Petitioner holds all unknown named agents, listed as, DOES as responsible as all the above named RESPONDANTS, reponsible for violating

Petitioner Constitutional and Civil Rights.

Petitioner states causes of action under Bivens vs. Six Unknown Named Agents (1971) 403 U.S. 388, 395, 91 S.Ct. 1999, 2004 ("Historically, damages have been regarded as the ordinary remedy for an invasion of personal interests in liberty.") Respondants were responsible for unlawful surveillance, diversion of Petitioner's business, and unlawful search and seizure from Petitioner's safe deposit box. Petitioner alleges that telephone surveillance and the theft of documents from Petitioner's safe deposit box were used to manufacture reasons for Borgia's existence, cover-up reasons for the initial discriminatory and Unconstitutional investigation of Petitioner to achieve an result to justify the means of an unlawful investigation. PRIVACY RIGHTS ESTABLISHED in 9th Cir no. 84-6231. AND 80 L.Ed.2d85, 103S.Ct. 1652....

Petitioner believes that he has a right to Petition for redress of grievances and his Complaint and PETITION FOR REMOVAL should be construed as such a petition. Petitioner's ability to finance an attorney have been severely limited by defendants, who, allegedly, under color of law, conduct an investigation limiting his business. Petitioner, acting in pro per is attempting to defend his constitutional and civil rights while the ongoing unlawful investigations allegedly continue to inter-fere with Petitioner's ability to find or afford an attorney." ALLEGATIONS IN COMPLAINT C85-20209WAI ARE "ONGOING" and currently there are MICROPHONES INBEDDED IN THE ROOF OF DAMASCUS OFFICE at 259 Meridian #10, planted by RESPONDANTS VIOLATING DAMASCUS' ATTORNEY-CLIENT PRIVILAGE, AS WELL AS privacy rights.

DAMASCUS ALSO ALLEGED IN CROSS

COMPLAINTS THAT GOVERNMENT DEFENDANDS SUCH AS THE DIRECTOR OF THE BOARD OF DENTAL EXAMINERS WHO conspired to plant agent Borgia in Petitioner's office and COMPETED FOR PATIENTS IN THE SAME 3MILE AREA AS DAMASCUS, INITIATED UNUSUAL AND UNPRESCIDENTED INVESTIGATIONS USING BORGIA AS AN UNDERCOVER AGENT TO DAMAGE THE CHARACTER AND RESTRAIN THE TRADE OF DAMASCUS COULD ALSO BE HELD LIABLE FOR MISCONDUCT UNDER 28USC 1337. 802 F2d 941 Miller v. Heclund(9thCir) "Oregon liquor control regulations violated Sherman Act."85-1592 (9th Cir)803 F2d 1143

PRIVATE ANTITRUST ACTION ALLOWED BY COMPETITOR.

DAMASCUS asserted that exclusively California Dental Association members monopolized the California State Board of Dental Examiners in conspiracy with the Department of Health and Human Services,

using exclusively American Dental Association members, initiated a unlawful and discriminatory investigation of Petitioner who was a non-member and competitor of the CDA members investigating him alleging an antitrust cause of action against conspiring defendants. Since these allegations ARE in the original complaint and anti-trust allegations need not be specific, Petitioner contends that amendment with respect to anti-trust allegations relating to non government defendents retains pendant jurisdiction since issues arise out of the same nucleus of facts concerning the misrepresentation and fraud committed by borgia and violation of due process rights by interferences with Petitioner's business. DAMASCUS ASSERTED IMPLIED CONTRACTS FOR PAYMENT FOR NORMAL SERVICES WITH "WELLS FARGO BANK AND PACIFIC BELL, AND THAT THERE EXISTS AN IMPLIED CONTRACT THAT A BANK SAFE DEPOSIT BOX 'BE

SAFE' FROM WARRENTLESS SEARCH AND SEIZURE PURSUANT TO THE FOURTH AMENDMENT TO THE U.S. CONSTITUTION. AND THAT PACIFIC BELL ACCEPTED OVER $20,000 DOLLARS AS PAYMENT FOR AN IMPLIED CONTRACT FOR NORMAL TELEPHONE SERVICES AND WHEN PLAINTIFF IS NOT PROTECTED FROM ABUSES OF SURVEILLANCE AND MONEY IS TAKEN, THAT ALSO CONSTITUTES FRAUD." PART OF THE PROBLEMS ONLY COMPENSATED FOR IN THE AMOUNT OF $492 OCCURRED DURING 1983 WHEN PACIFIC TELEPHONE MONOPOLIZED SERVICES. 9TH Cir No.85-6094

"Landsberg v. Scrabble"
Implied contract arose from limited disclosure of manuscript.

California law allows for recovery for the breach of an implied-in-fact contract.

UNDER 42USC 1983 AND BIVENS, DAMASCUS ALSO HOLDS NAMED GOVERNMENT DEFENDANTS RESPONSIBLE FOR CAUSING BREACHES OF CONTRACTS, FOR FRAUD, INTRUSION, INVASION OF PRIVACY, WARRENTLESS SEARCH AND SEIZURE,

PRESENTING FALSE AFFIDAVITS FOR OBTAINING FEDERAL COURT ORDERS FOR TELEPHONE SURVEILLANCE, FOR CONSIDERING DAMASCUS GUILTY OF SOME CRIME WITHOUT ANY JUDGEMENT EVER RENDERED IN ANY COURT OF LAW AND FOR INTENTIONIALLY RESTRAINING THE TRADE OF DAMASCUS IN A DISCRIMINATORY MANNER VIOLATING DAMASCUS' DUE PROCESS RIGHTS.

BORGIA'S SIGNED STATEMENT DENYING THE VERY PEOPLE SHE WORKED FOR, ATTACHED TO PETITION, IS A "Written memorandum that satisfies California statute of frauds requirements. California now permits an action for fraudulent misrepresentation upon an alleged oral agreement or upon an agreement otherwise unenforceable under the statute of frauds."9th Cir Levin and Lipton v. Knight 780F2d786 RECENTLY THE 9TH CIRCUIT RULED THAT A GOVERNMENT EMPLOYEE HAS A CERTAIN EXPECTATION OF PRIVACY IN A LOCKED DESK. Schowengerdt v. General Dynamics ON 9TH CIRCUIT CASE 84-6231 AND

SINCE MICROPHONES NOW EXIST IN THE RETARRED ROOF OF APPELLANTS OFFICE AND ARE USED BY UNKNOWN AGENTS OF UNKNOWN LAW ENFORCEMENT AGENCIES TO LEAK INFORMATION TO INSURANCE INVESTIGATORS. THE MEDIA AND OTHER PUBLIC AND PRIVATE INVESTIGATORS AND SINCE APPELLANT CITED BIVENS IN THE COMPLAINT CONCERNING BLATENT VIOLATION OF PRIVACY RIGHTS. APPELLANT CONTENDS THAT WITH RESPECT TO HIS PRIVACY RIGHTS HE AT LEAST STATES A BIVINS CLAIM THAT SHOULD NOT BE DISMISSED ON THE PLEADINGS.-Clark v. Yosemite Community College Dept., 785 F2c 781.

Fact that there are adequate postdeprivation procedures available under state law for random and unauthorized conduct by state emoloyee does not preclude Petitioners from bringing civil rights action for direct violation of their constitutional rights, as distinct from their due process rights. U.S.C.A. s

1983.-Id.(9TH CIRCUIT REVIEW)

Where Petitioners alleged violation of substantive constitutional rights apart from due process rights, availability of state remedies is immaterial. U.S.C.A. Const. Amend. 5; 42 U.S.C.A. s 1983.-Id.

C.A.9(Cal.) 1986. Existence of postdeprivation state remedies does not bar a substantive due process claim under s 1983. 42 U.S.C.A. s 1983. Rutherford v. City of Berkeley, 780 F2d 1444.

When chalanged government conduct is of such an egregious nature as to constitute a deprivation of fundamental due proscess rights within the meaning of the governing ROCHIN and MEREDITH cases, the availability of state court relief does not bar Federal Relief under s 1983. 42 USC s 1983-Id.

C.A.9(Cal.) 1986. To state cause of action under 42 U.S.C.A. s 1983, Petitioners must plead that defendants acting under color of state law deprived

Petitioners of rights secured by Constitution or federal statutes.-Gibson v. U.S.,781 F.2d 1334.

TO ASSUME THAT THIS PETITION IS FRIVOLOUS IS TO INSULT THE CONSTITUTION OF THE UNITED STATES.citing 682 F.2d 858,863 (9th CIR.1982) AND ANDERSON v. CENTRAL POINT SCHOOL DISTRICT, 746 F.2d 505,507(9TH Cir.1984), and PICKING, 391 US at 570.

BIVENS COULD NOT NAME THE EXACT NAMES OF THE AGENTS IN 403 U.S.288 AND NEITHER CAN DAMASCUS NAME THE EXACT NAMES OF ALL UNKNOWN NAMED AGENTS RESPONSIBLE FOR PLANTING MICROPHONES IN THE ROOF OF DAMASCUS OFFICE. FOR PLANTING BORGIA IN DAMASCUS' OFFICE AS AN UNDERCOVER AGENT,FOR THE USE AND ALLEGED ABUSE OF UNLAWFULL TELEPHONE SURVEILLANCE, FOR RESTRAINING THE TRADE OF DAMASCUS AND VIOLATING HIS PRIVACY RIGHTS HOWEVER NO MOTIONS TO DIMISS WERE SUBMITTED BY RESPONDANTS BASED ON THE PLEADINGS. DAMASCUS MOTIONED THE COURT FOR

AMENDMENT OF THE civil rights and anti-trust COMPLAINT AS A MATTER OF COURCE, FOR THE COURT TO UPHOLD IT'S PROCEDURAL orders and for the court to consider the pleading of Petitioner as true on a motion to dismiss and terminate telephone surveillance that is alleged to be limiting Petitioner's ability to find and afford an attorney. DAMASCUS ASSERTED IMPLIED CONTRACTS FOR PAYMENT FOR NORMAL SERVICES WITH "WELLS FARGO BANK AND PACIFIC BELL, AND THAT THERE EXISTS AN IMPLIED CONTRACT THAT A BANK SAFE DEPOSIT BOX 'BE SAFE' FROM WARRENTLESS SEARCH AND SEIZURE PURSUANT TO THE FOURTH AMENDMENT TO THE U.S. CONSTITUTION. AND THAT PACIFIC BELL ACCEPTED OVER $20,000 DOLLARS AS PAYMENT FOR AN IMPLIED CONTRACT FOR NORMAL TELEPHONE SERVICES AND WHEN PLAINTIFF IS NOT PROTECTED FROM ABUSES OF SURVEILLANCE AND MONEY IS TAKEN, THAT ALSO CONSTITUTES FRAUD." PART OF THE PROBLEMS ONLY

COMPENSATED FOR IN THE AMOUNT OF $492

OCCURRED DURING 1983 WHEN PACIFIC TELEPHONE

MONOPOLIZED SERVICES.

PRIVACY RIGHTS

Schowengerot v. General Dynamics ON 9TH CIRCUIT CASE 84-6231 SETS A PRECIDENCE THAT UPHOLDS AT LEAST THE FOURTH AND FOURTEENTH OF THE UNITED STATES CONSTITUTION. ALLEGED IN COMPLAINT, CRIMINAL ACTS ARE BEING COMMITTED UNDER COLOR AND COVER OF LAW DEPRIVING PLAINTIFF'S PROPERTY WITHOUT DUE PROCESS OF LAW IN A VERY DECEIPTFULL AND UNCONSTITUTIONAL MANNER VIA COURT ORDERS FOR THE WARRENTLESS SEARCH AND SEIZURE OF DENTAL RECORDS, COPIES OF ADMINISTRATIVE CLAIMS, MALPRACTICE INSURANCE CONTRACTS, JOURNALS FROM 1979 ONWARD TO THE PRESENT AND OTHER PROERTY FROM PLAINTIFF'S OFFICE HOME AND SAFE DEPOSIT BOX. PLAINTIFF MOTIONED FOR THE RETURN OF CONFISCATED PROPERTY IN THE POSSESSION OF INVOLVED LAW ENFORCEMENT AGENCIES PURSUANT TO THE FOURTH

AND FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND THE LIBERAL PROCEDURAL ORDERS. DAMASCUS ALLEGED A CONSPIRACY TO USE PLAINTIFF AS A SCAPEGOAT TO OVERTURN A CALIFORNIA SUPREME COURT DECISION. The March 1986 decision of the California Supreme Court held that when garbage is placed in a trash bin, it falls into an area of constitutionally protected property, under the Fourth Amendment, that cannot be seized by police. ORDER DENYING REVIEW, AFTER JUDGEMENT BY THE COURT OF APPEAL, 2ND DIST, DIVISION 7, No. B006936, PEOPLE v. ROONEY, IN THE SUPREME COURT OF THE STATE OF CALIFORNIA, IN BANK, FILED MARCH 13, 1986 SUPPORTS THE CALIFORNIA SUPREME COURT'S CONCLUSION THAT article I, section 28, subdivision (d), of the state Constitution, the"truth in Evidence" provision of the Victim"s Bill of Rights (Proposition 8), abrogates "a defendant's right to object to and suppress evidence

seized in violation of the California Constitution (1985) 37 Cal.3d 873, 879.). This decision is supported by Cal v.Krivda and Katz v. U.S.389U.S.347 . THESE decisions give rise to a reasonable expectation of privacy.

Finially the critical issue here is whether police can seize Petitioner's property as alleged from his home, office and safe deposit box without ever presenting a warrent upon his person and then plant part of that property in his trash along with other property not belonging to Petitioner and hold it as evidence after demand for return of property seized is made in a civil suit. Furthermore Petitioner believes that under the fourth amendment he has a right to at least a copy of a search warrent presented to wells Fargo bank but not to Petitioner, especially when Petitioner is allegeing a criminal conspiracy to violate Petitioner's

Fourth and Forteenth amendment rights to cover-up INVESTIGATIONS INVOLVING BORGIA WHO COMMITED FRAUD AND INTRUSION.

Not only do the actions of law enforcement deprive Appellant his basic Fourth and Fourteenth Amendment Rights but they also infringe upon reasonable expectations of privacy established by the U.S. Supreme Court(U.S. v. Jacobson 80 L.Ed.2d 85,103,104 S.Ct.1652,1661(1984) " The concept of an interest in privacy that society is prepared to recognize as resonable is,by it's very nature, critically different from the mere expectation , however well justified, that certain facts will not come to the attention of authorities." (Id.,104 S.Ct. 1661) Moreover, "it would be merely tautological to fall back on the notion that those expectations of privacy are legitimate depend primarily on cases deciding exclusionary-rule issues in

criminal cases. Legitimation of expectation of privacy by laws must have a source outside the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society."

IN JULY 1987, THE 9TH CIRCUIT HELD "Private corporations can be held liable for constitutional violations, provided the Defendant engaged in federal action. Whether or not the private defendants action was a federal action is a question of fact to be determined on remand."(NINTH CIRCUIT REVIEW,84-6231) AS ALLEGED:

" The unknown named agents of the U.S. Department of Health and Human Services and other RESPONDANTS who used Borgia as an agent in" DR. DAMASCUS OFFICE, WHO ALSO ACCESSED, COPIED AND STOLE PROPERTY FROM DAMASCUS'S WELLS FARGO BANK SAFE-DEPOSIT BOX WITHOUT EVER PRESENTING DAMASCUS A WARRENT, INVADED APPELLANTS PRIVACY,

STATING A CLAIM UNDER BIVENS THAT SHOULD NOT BE DISMISSED ON THE PLEADINGS WITHOUT LEAVE TO AMEND. IT ALSO POSES A FEDERAL QUESTION.

The allegations of: theft property of_ from Petitioner's safe deposit box, denial of due process of law to unlawfully conduct endless sham civil investigations concerning dental malpractice under guise of phoney criminal investigations, and the attempt by participants of a U.S. department of Health and Human Services investigation to sue Appellant in State superior court covering-up facts necessary to remove cases to Federal Court, and conspiring to manufacture endless new criminal investigations for the purpose of allowing the statue of limitations to expire concerning criminal conduct commited by conspiring law enforcement agencies, present Federal Questions that CANNOT allow AFIRMING OF DECISION. REVERSAL REQUESTED.

42 USC 1983/BIVENS

Petitioner has standing to challenge Search Warrant Mistakenly Executed at HIS property, including THE WELLS FARGO BANK SAFE DEPOSIT BOX, at Homestead-Keily branch. WHEN PROERTY IS MISSING AND NO WARRENT EVER PRESENTED UPON PLAINTIFF the"Objective Reasonableness" Standard defineing the qualified immunity available in a Sec. 1983 damages action for Unreasonable Execution of Search Warrant must be challanged at a hearing PURSUANT TO THE FOURTH AMENDMENT BECAUSE ONLY DISCOVERY and a jury trial will expose if Damage to his property, including character assasination, caused by a biased analysis of copied journals(diaries) was caused by more than mere negligence; gross negligence in training or supervising and an insensitivity to constitutional and privacy rights gives rise to liability and as authorized by Bivens v. Six Unknown Named

Agents, 403 U.S. 388 (1971). 85-1505 Bergquist v. County of Cochise,

Damascus complained that the search warrant and federal court orders for surveillance were issued without probable cause and mistakenly and fraudulently executed at Damascus residence, office, house and bank safe-depoit box in an unreasonable and excessive manner, allowing the parties to alter documents, steal property, and misconstrue copies of handwritten documents and pictures for the purpose of initiating further investigations causing further harrassment and further violating appellants privacy rights,"to manufacture reasons for Borgia's existence(as an undercover agent), cover up reasons for initial discriminatory and unconstitutional investigations to acheive an end result to justify the means of an unlawfull investigation."(page 10 of complaint) Damascus's complaint

sufficiently alleges a causal connection between a policy of inadequate training and supervision and constitutional deprivation under color of law, such that gross negligence and FRAUD would give rise to Sec. 1983 liability. 9TH CIR 85-1505 Bergquist v. County of Cochise,

The court should not determine grave constitutional questions upon a demurrer to a complaint or upon an equivalent motion if there is a reasonable likelihood that production of evidence will make the answer to the questions clearer. Picking v. Pennsylvania F.2d 240. Simple discovery requests to produce documents, acopy of a search warrant, a court order for wire surveillance and simple answers to interrogitories are not unreasonable requests before dismissing complaint pursuant to RES JUDICATA yet hearing false afidavits and other documents outside the pleadings. JUDGES IN THE DISTRICT COURT

AND COURT OF APPEALS COMMITED FRAUD BY DISMISSING & AFFIRMING COMPLAINT AS FRIVOLOUS AFTER THEIR own IN-CAMERA INVESTIGATIONS AND TURNING AN APPEAL INTO A CASE OF JUDICIAL DISCRETION. USING telephone surveillance TO MAKE SECRETIVE DETERMINATION, WHEN DAMASCUS COMPLAINT WAS DISMISSED ON PLEADINGS WITHOUT DISCOVERY. THIS is an abuse of discretion. JUDGES COULD NOT HAVE ACCPTED THE PLEADINGS OF PLAINTIFF AS TRUE furthermore they CONDUCTED THIS BASED ON BIASED INVESTIGATIONS, INCLUDING EXTRANEOUS MATERIALS OUTSIDE THE PLEADINGS, ACTING AS IF THEY WERE A JURY.

Calling complaint frivilous was only a means to allow cover-up of investigations.

II. AFTER CONSIDERING EXTRANIOUS MATERIALS OUTSIDE THE PLEADINGS THE COURT SHOULD CONVERT THE MOTION TO DISMISS INTO A MOTION FOR SUMMARY JUDGEMENT. On motion for judgment on the pleadings, it is

improper for the court to hear affidavits of defendants. Friedman v. Washburn Co., C.C.A 7th, 1944, 145 F.2d 715.)

Furthermore, prior to dismissing the complaint pursuant to 12(b)6, Judge INGRAM AND JENSEN were approached by Respondants and Defence Council and presented with statements and extranious materials that were submitted without hearing, prior to granting the motion to dismiss based on the pleadings.

Where district court considers evidence outside the pleadings, a motion to dismiss should be treated as one for summary judgment. Dickerson v. U.S. Steel Corp. D.C. Pa. 1977, 439 F. Supp. 55

Where certain exhibits and affidavits were submitted and not excluded by trial court in ruling on motion to dismiss, the motion to dismiss was converted into a motion for summary judgment. Smith v. Yellow Freight System, Inc., 536 F.2d 1320.

Petitioner has alledged that RESPONDANTS committed: fraud, unlawful surveillance, abuse of telephone surveillance, warrantless search and seizures and violated Petitioner's constitutional and civil rights while interferring with Petitioner's business under color of law in conducting unlawful investigations designed to justify previous violations of Petitioner's constitutional rights.

FACTS ADMITTED BY MOTION TO DISMISS

Where a complaint was dismissed on the pleadings, allegations of complaint must be taken as true by the Supreme Court. Radovich v.National Football League,1957,77 s.Ct 390, .

Civil Rights Complaints are to be construed liberally. Parties proceeding pro se are to be accorded liberal treatment when they attempted to grapple with the intricacies of federal practice. Firnhaber v. Sensenbrenner,1974,385F.Supp.406

F.R.C.P. supp. Rule 8 p. 286.

AND ANTI TRUST COMPLAINTS ARE TO BE AFFORDED LIBERAL PLEADING REQUIRMENTS, RULE 8ANTI-TRUST.

THIS COMPLAINT PRESENTS THE CONSTITUTIONAL QUESTION OF:1. WHETHER THE COURT CAN VIOLATE ATTORNEY-CLIENT PRIVILAGE AND PRIVACY RIGHTS AND DETERMINE FOR ITSELF THAT FEDERAL COURT ORDERS FOR SURVEILLANCE WERE NOT ABUSED, 2. WHETHER OR NOT A COURT ORDER FOR THE INSPECTION OF PLAINTIFF'S SAFE DEPOSIT BOX, WITHOUT A WARRENT, COULD HAVE RESULTED IN THE SEIZURE OF MATERIALS BY DEFENDANTS. 3. OR WHETHER A BREACHED CONTRACT IN VIOLATION OF THE TERMS OF THE CONTRACT COULD HAVE RESULTED FROM ONGOING INVESTIGATIONS VIOLATING PRIVACY RIGHTS?

RESPONDANTS MADE FAULTY MOTIONS FOR DIMISSAL PURSUANT RES JUDICIA. THE STATE ATTORNEY GENERAL, RICHARD TULLIS PLEADED THE DOCTRINE OF COLATERAL ESTOPAL.

JUDGE INGRAM DID NOT RULE A JUDGEMENT

BASED UPON A TRIAL OF CONTESTED FACTS. DISMISSAL PURSUANT TO 12(b)6 WAS ENTERED AFTER THE STATUS CONFERENCE WAS CANCILLED AND ALL DISCOVERY MOTIONS IGNORRED. THE STATE OF CALIFORNIA HAS NEVER PREVIOUSLY COOPERATED WITH ANY DISCOVERY REQUESTS AND THE STATE RESPONDANTS HAVE DISCRIMINARILY WITHHELD INFORMATION IN VIOLATION OF THE CALIFORNIA RECORD ACT.

"INVESTIGATIONS" CONDUCTED BY JUDGE INGRAM AND THE COURT OF APPEALS VIOLATED ATTORNEY-CLIENT PRIVILAGE AS WELL AS FURTHER ABUSING SURVEILLANCE.

ATTORNEYS FOR RESPONDANTS REFUSED TO COOPERATE WITH PROCEDURAL ORDERS AND FOR RETURN OF PROPERTY AND COPIES OF PROPERTY OF DAMASCUS IN POSSESION OF RESPONDANTS OBTAINED THROUGH ABUSED COURT ORDERS TO INSPECT DAMASCUS'S WELLS FARGO SAFE DEPOSIT BOX, HOUSE, OFFICE AND AUTOS. A WARRENT TO SEARCH CONTENTS OF DAMASCUS' PROPERTY WAS NEVER PRESENTED TO DAMASCUS AND SO DAMASCUS

ALSO MOTIONED THE COURT FOR COPIES COURT ORDERS FOR INSPECTION, SURVEILLANCE AND FEDERALLY COURT ORDERED TELEPHONE SURVEILLANCE THAT CONTINUES TO BE ABUSED TO DIVERT INCOMING TELEPHONE CALLS FROM PATIENTS FROM THE GENERAL PUBLIC FOR THE PURPOSE OF FORCING DR.DAMASCUS TO TAKE CALLS FOR THE PURPOSES OF INVESTIGATION AS ALLEGED IN COMPLAINT.

CURRENTLY THERE ARE NUMBEROUS HIGH GRADE MICROPHONES EMMBEDDED IN THE NEWLY RETARRED ROOF OF APPELLANTS OFFICE AND INTERROGITORIES REQUESTED THE THE NAMES OF EXACT GOVERNMENT AGENCIES AND AGENTS WHO PLANTED THEM THERE.

DAMASCUS ALLEGED THAT THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES AND THE CALIFORNIA DEPARTMENT OF HEALTH SERVICES WERE CONDUCTING OUTRAGEOUS MEDI-CAL AND KNOX-KEEN PROVIDER CONSUMER INVESTIGATIONS OF DR.DAMASCUS IN A DISCRIMINATORY MANNER BECAUSE DAMASCUS WAS

NOT A MEMBER OF THE AMERICAN DENTAL ASSOCIATION. THE INVESTIGATIONS, ALLEGEDLY INVOLVING DENTAL ASSISTENTS INCLUDING DEFENDANT PATTY BORGIA, WHO ENTERED INTO VERBAL AND WRITTEN CONTRACTS WITH DAMASCUS WITH INTENT TO COMMIT FRAUD, COPY, ALTER, AND STEAL RECORDS, BREACHED HER VERBAL AND WRITTEN CONTRACT WITH DAMASCUS, CAUSED THE BREACH OF DAMASCUS' CONTRACT WITH DEFENDANT PMI, TURNED AWAY CASH CUSTOMERS AND SCHEDULED UNWANTED MEDICAL PATIENTS IN VIOLATION OF DAMASCUS INSTRUCTIONS, WERE ALLEGED TO HAVE BEEN ONGOING AND CONDUCTED EXCLUSIVELY BY MEMBERS OF THE AMERICAN DENTAL ASSOCIATION, RESTRAINING THE TRADE OF A NON-MEMBER OF SUCH AN ASSOCIATION. FURTHERMORE WHEN INVESTIGATION ARE ONGING & ALLEGED FRAUD PREVENTS DISMISSAL ON PLEADINGs.

CONCEALMENT OF FACTS AND FRAUD commited by THE U.S. DEPART. HEALTH AND HUMAN SERVICES CANNOT deprive DAMASCUS the

ability to expose the federal nature of the sham Superior Court cases NECESSARY FOR A PETITION FOR REMOVAL. Utah v. Livsey (1970, D.C. Utah) 312 F Supp 1397.

DEFENDANTS HASSE, MUROTSUME and their FALSE expert witnesses of the U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES are concealing facts under color of investigations, and the concealment of facts cannot deprive Damascus the right to remove state superior court cases. The usual rule that federal nature of the case must appear on the face of the PETITION TO REMOVE, DOES NOT APPLY because THE SURGEON GENERAL IS CONCEALING FACTS IN A FRAUDULENT MANNER CONCERNING THE PARTICIPATION OF THESE PATIENTS IN U.S. DEPARTMENT OF HEALTH SERVICES INVESTIGATIONS.

FURTHERMORE no remand order was issued, AS JUDGE JENSEN DID NOT EVEN READ PETITION TO REPOVE BEFORE DISMISSING IT THE DAY IT WAS FILED. A MOTIONS ATTORNEY DETERMINED ENTIRE APPEAL BY WAY OF A "LIMITED REMAND" in

violation of F. RULE A. P. 27(c) &RULE 22. Appellant filed a timely MOTION FOR REHEARING (HEARING) FOR THIS UNPRESCIDENTED REMAND BEFORE THE OPENING BREIF WAS FILED. THE APPYEAL OF AN UNREMANDED PETITION TO REMOVE ALLOWS THIS COURT THE OPPORTUNITY TO DETERMINE THE ISSUE, WHICH SHOULD NOT BE DETERMINED BY JUDGES WHO ALSO SECRETLY LISTENED TO EDITED SURVEILLANCE RECORDINGS. Concealment of facts and fraud commited by THE FEDERAL AGENCIES UNDER FEDERAL SURVEILLANCE ORDERS CANNOT deprive DAMASCUS the ability to expose the federal nature of the sham Superior Court cases, AND FRAUDULENTLY AFFIRMING DISMISSAL AS FRIVILOUS, WITHOUT DISCLOSING FEDERAL NATURE OF CASE. Utah v. Livsey (1970, D. C. Utah) 312 F Supp 1397.

Allegations in a complaint for damages predicated on fraud. (Page v. Comert, C. A. 1957, 243 F. 2d 245, 100 U. S. App. D. C. 139.) Petitioner alleged that respondants Borgia,

the United States Attorney general's office and other RESPONDANTS committed fraud.

Thirdly, Petitioner alleged that respondants violated Petitioner's constitutional and civil rights and stated that this appeal has Federal Question Jurisdiction.

The PETITION TO REMOVE was completely ignored by district court Judge Jensen, because a pro per wrote it, AND because Judge Jensen himself was "involved in issuing court orders for wire surveillance based on false affidavits" as alleged IN RELATED COMPLAINT. Jensen dismissed the PETITION TO REMOVE that same day WITHOUT remanding it to state court and then after Damasous appealed the unremanded petition to remove CIRCUIT Judge SNEED ALLOWeED DISTRICT COURT JUDGE JENSEN TO CHANGE HIS ORDERS IN A DECEIPTFULL MANNER BY WAY OF AN UNPRESCIDENTED "LIMITED REMAND". HE SUSPENDE THE BRIEFING SCHEDULE AND IGNORRED

THE OBJECTION OF DAMASCUS WHO COMPLAINED THAT HE WAS DECIDING THE ENTIRE APPEAL IN VIOLATION OF RULE 27(c).

Concerning 18 USC 2518 (8)(b), This Complaint has FEDERAL QUESTION Jurisdiction, because State Courts lack "competent" Jurisdiction concerning discovery of Court Orders to amend and make additional findings of fact. Court orders for the warrantless search and seizure of Petitioner's safe deposit box and the contents thereof and for use of telephone surveillance equipment to deny appellant's NORMAL business under color of law violates the Fourth and Fourteenth amendments to the United States Constitution. Petitioner further alleges that the United States District Court for the Northern District of California in San Jose issued orders for unlawful surveillance based on false affidavits presented by unknown parties concerning Petitioner. Petitioner asserts

that discovery is essential to the amendment of his complaint. Most of 18 USC 2510 et sec. pertains to the use of surveillance devices as a form of CRIMINAL INVESTIGATION, BUT ONLY WHEN ALL ELSE FAILS.

18 USC 2518 3/8 Supp. PURPOSE

Purpose of subsec.(1)(c) of this section is not to foreclose electronic surveillance until every other imaginable method of investigation has been unsuccessfully attempted but, rather, to inform issuing judge of difficulties involved and to ensure that wiretapping is not resorted to in situation in which traditional investigative techniques would suffice.

U.S.vs. Webster, C.A.Tex.1984 734 F.2d 1048, renearing denied 739F.2d633.

Since investigations have been ongoing for over four years and no charges ever filed Petitioner contends that federal

court orders for surveillance have not only been abused but violated this section.

THE UNITED STATES CONSTITUTION GUARENTEES THAT A PERSON IS INNOCENT UNTIL PROVEN GUILTY.

Yet, criminal investigations by there very nature assume that Petitioner is guilty of some crime, and the supporting affidavits, indicating that Petitioner engaged in some sort of crime must be challanged when investigations without judgements rendered in any court of law, can result in deprivation of basic rights guaranteed by the United States Constitution.

Futhermore Petitioner alleges violations of privacy rights under the Fourth and Fourteenth Amendments to the United States Constitution, AND STATES A CLAIM under BIVENS, Petitioner is alleging that besides invading Petitioner privacy, the abuse of these devices is beyond the

scope of intended use by unknown agencies of whom are also intentionally abusing it's use to prevent Petitioner from receiving new patients from the public that are not specifically sent for the purposes of investigation. INVESTIGATION HAVE THUS TOTALLY DEPRIVED PLAINTIFF OF FOURTH AMENDMENT RIGHTS AND EXTRANIOUS MATERIALS SUBMITTED ON A MOTION TO DISMISS, SHOULD BE DISREGUARDED, SANCTIONED, AND RESPONSIVE PLEADINGS OF DEFENDANTS ORDERED ALONG WITH THE IMMEDIATE PRODUCTION OF PROPERTY SEIZED, TERMINATION OF PENDING UNCONSTITUTIONAL INVESTIGATIONS, AND ORDERS FOR DEFENDANTS TO COOPERATE WITH PROCEDURAL ORDERS.

JEFFRY JANOFF and R. SPENCER QUIN FURTHER VIOLATED DAMASCUS'S DUE PROSCESS RIGHTS BY SERVING SUMMONS AND amended COMPLAINT ON BEHALF OF NANCY HASSE and NICHOLOUS MUROTSUME AND VIOLATING 28USC 1446(e) WHICH SPECIFICALLY STATES:

Under authority of 28USC 1446 (e) "the state court shall proceed no further unless and until the case is remanded"

DAMASCUS HAD PREVIOUSLY CITED 28USC1446(e) EXACTLY AS IT APPEARS ABOVE IN HIS NOTICES FILED IN SUPERIOR COURT.

ATTACHED to petition to remove IS A WRITTEN MEMORANDUM ON PATIENT CHART SIGNED BY NANCY HASSE IN 1984 IN WHICH SHE ADMITTS IN WRITING THAT SHE HAD A PREVIOUS CONDITION THAT SHE IS NOW EXPECTING ALEXANDER DAMASCUS TO PAY DAMAGES FOR AFTER ALLEGEING THAT ALEXANDER DAMASCUS CAUSED IN CALIFORNIA SUPERIOR COURT CIVIL COMPLAINT NO.577605. DAMASCUS ALSO LEARNED FROM MEDICAL MALPRACTICE ATTORNEY"S APPOINTED TO DAMASCUS BY SAFECO THAT HASSE'S ATTY. WAS IN POSSESSION OF RECORDS OF DR. DAMASCUS THAT DAMASCUS HAD STOLEN FROM PROPERTY.

1. NO CASE PREVIOUSLY DECIDED IN THIS COURT SETS ANY PRESCIDENT FOR HIS ACTION AS THIS IS THE FIRST APPEAL OF AN UNREMANDED

DISMISSAL OF A PETITION TO REMOVE, WHERE JUDGES WERE ALSO INVOLVED IN ISSUING SURVEILLANCE ORDERS. FURTHERMORE PETITIONER HAD REQUESTED THAT THE COURT DISTRIBUTE PETITIONERS "PETITION FOR REHEARING EN BANC TO ALL ACTIVE JUDGES. AFTER LEARNING THAT ONLY AMOTIONS ATTY HAD READ ANY OF DAMASCUS'S PLEADINGS, THE FINIAL ORDER REFLECTED THE FACT THAT NO JUDGE READ PETITIONERS PLEADINGS. THE "LIMITED REMAND"IS REALLY A DECEPTIVE DECISION ALLOWING COURT TO CHANGE ORDERS IN AN UNFAVORABLE MANNER. JUDGE JENSEN DID NOT EVEN SEND DAMASCUS A COPY OF HIS REQUEST AND ANY CHANGES OF ORDERS UNDER APPEAL VIOLATE RULES OF CIVIL AND APPELLANT PROCEDURE.

2. A SINGLE JUDGE SHOULD NOT ORDER SUCH A LIMITED REMAND AS IT EFFECTIVELY DISPOSES OF ENTIRE APPEAL. PETITIONER CITES F. RULE App. P. 27(c) AS JUDGE SNEED REMANDED IN ERROR.

DEFENCE IN SHAM CIVIL CASES SUCH AS HASSE v DAMASCUS AND MUROTSUME v. DAMASCUS, WHERE PETITIONER AS PETITIONER IS A DEFENDENT AND IN WHICH THE OUTCOME OF THESE ALLEGED SHAM CIVIL COMPLAINTS, FILED BY PARTICIPANTS OF A DEPARTMENT OF HEALTH AND HUMAN SERVICES INVESTIGATION OF PLAINTIFF, WILL DEPRIVE OR LIMIT PLAINTIFF THE RIGHT TO PRACTICE DENTISTRY IN THE STATE OF CALIFORNIA. PURSUANT TO 18 USC 2518(8)(b) ONLY A U.S. DISTRICT COURT OR A U.S. COURT OF APPEALS RETAIN COMPETITENT JURISDICTION TO COMPELL EXPOSURE OF FEDERAL COURT ORDERS FOR TELEPHONE SURVEILLANCE.

PETITIONER BELIEVES THAT ANY COURT THAT ALLOWS DISMISSAL OF COMPLAINTS, AND RELATED PETITIONS TO REMOVE, WITHOUT ALLOWING DISCOVERY OF COVERED-UP FEDERAL COURT ORDERS, IN COMPLAINTS ALLEGING:

1. THE DEPRIVATION OF DUE PROCESS OF LAW BY SECRATIVE ADMINISTRATIVE ACTIONS THAT LIMIT THE TRADE OF DAMASCUS, UNDER COLOR OF STATE

LAW, IN A DISCRIMINATORY MANNER, AGAINST A NON-MEMBER OF THE AMERICAN DENTAL ASSOCIATION, AND IN VIOLATION OF THE DENTAL PRACTICE ACT, WHILE THE DENTAL PRACTICE ACT EXPLICITLY REQUIRES A JUDGEMENT IN EXCESS OF $3,000 BEFORE THE STATE CAN TAKE ACTION AGAINST A LICENCEE, AND 2.ABUSING FEDERAL COURT ORDERES FOR TELEPHONE SURVEILLANCE TO LIMIT INCOMING BUSINESS CALLS, IN A MANNER NOT AUTHORIZED BY 18USC 2510 et sec., IS INSULTING THE UNITED STATES CONSTITUTION.

DEFENCE IN SHAM superior court civil cases such as HASSE v DAMASCUS AND MUROTSUME v. DAMASCUS, WHERE PETITIONER IS A DEFENDENT AND IN WHICH THE OUTCOME OF THESE ALLEGED SHAM CIVIL COMPLAINTS, FILED BY PARTICIPANTS OF A DEPARTMENT OF HEALTH AND HUMAN SERVICES INVESTIGATION OF PLAINTIFF, WILL DEPRIVE OR LIMIT PLAINTIFF THE RIGHT TO PRACTICE DENTISTRY IN THE STATE OF CALIFORNIA. PURSUANT TO 18 USC 2518(8)(b) ONLY A U.S. DISTRICT COURT OR A

U.S. COURT OF APPEALS RETAIN COMPETITENT JURISDICTION TO COMPELL EXPOSURE OF FEDERAL COURT ORDERS FOR TELEPHONE SURVEILLANCE AND DISCOVERY FROM FEDERAL AGENCIES.

PETITIONER IS ATTEMPTING TO EXPOSE STATE COURT COMPLAINTS AS PART OF "SHAM" FEDERAL INVESTIGATIONS, IN WHICH THE CASES WERE FILED ON BEHALF OF PATIENTS SENT BY STATE AND FEDERAL DEPT HEALTH SERVICES INVESTIGATORS WHILE FEDERALLY COURT ORDERED TELEPHONE SURVEILLANCE WAS BEING ABUSED TO DIVERT CALLS AND LIMIT CALLS. THESE CASES WERE FILED AS IF THE PARTIES INVOLVED WERE NOT PART OF THE INVESTIGATION AND DISCOVERY OF ALLEGED INVOLVEMENT WITH INVESTIGATORS INVOLVED WITH ONGOING FEDERRALLY COURT ORDERED WIRE SURVEILLANCE CANNOT BE EXPOSED TO ALLOW A FAIR TRIAL TO PETITIONER IN STATE COURT.

TWO ELEMENTS OF THE PETITION THAT ARE IMPLIED BUT NOT FULLY ARTICULATED BY PETITIONER, ACTING IN PRO PER, TO MEET THE

TWO PRONG TEST OF JOHNSON v. MISSISSIPPI ARE THAT: ALTHOUGH THE DISCRIMINATION AGAINST PETITIONER IS BASED ON VIOLATIONS OF 42 USC 1983 THE PROSECUTION IS HANDLING THE CASE AS A SHAM "CIVIL" CASE TO ACHIEVE A SHAM "CIVIL" JUDGEMENT IN EXCESS OF $3,000 TO PROVIDE THE STATE BOARD OF DENTAL EXAMINERS AND THE DEPARTMENT OF HEALTH SERVICES AN EXCUSE FOR TAKING ACTION, RESTRAINING PETITIONERS BUSINESS, PRIOR TO A JUDGEMENT IN EXCESS OF $3,000, AS REQUIRED BY THE CALIFORNIA DENAL PRACTICE ACT. UNDER COLOR OF LAW, SECRATIVE ADMINISTRATIVE ACTIONS WERE TAKEN, RESTRAINING PETITIONERS BUSINESS BY ABUSING FEDERALLY COURT ORDERED TELEPHONE SURVEILLANCE IN A MANNER NOT AUTHORIZED BY 18 USC 2510 et sec, MAKING THE INVESTIGATIONS illegal AND ALLEGEDLY IN VIOLATION OF DUE PROSCESS OF LAW. FURTHERMORE PETITIONER HAS FURTHER ALLEGED THAT THE UNLAWFULL AND UNUSUAL

ADMINISTRATIVE RESTRAINTS WERE TAKEN BECAUSE PETITIONER WAS NOT A MEMBER OF THE AMERICAN DENTAL ASSOCIATION. PETITIONER REQUESTS THAT THIS COURT SET A PRESCIDENT ALLOWING REMOVAL OF ALLEGEDLY "SHAM" CIVIL COMPLAINTS IN THE SAME MANNER AS PROVIDED TO BLACKS IN REMOVING CRIMINAL COMPLAINTS, IN 28 USC 1443(d)

THIS PETITION TO REMOVE IS BASED ON ALLEGED CIVIL RIGHTS VIOLATIONS WHERE THE LACK OF "COMPETANT" JURISDICTION DENIES PETITIONER THE ABILITY TO EXPOSE INVOLVEMENT OF CO-CONSPIRATORS, ACTING UNDER COVER AND UNDER COLOR OF LAW. PROSECUTION AND JUDGEMENT RENDERED IN a STATE COURT, without "competent" Jurisdiction PURSUANT TO 18USC 2518(8)(b) to expose involvement of allegedly abused federally court surveillance, WILL DENY PETITONER THE ABILITY TO ADEQUITLY DEFEND HIS CASE: 1.making it imposible to enforce rights in State Courts, and

2.not allowing PETITIONER/Defendant to recieve a fair trial in state court 384 US 826 REGUARING REMOVAL UNDER AUTHORITY OF 28USC 1443(1). IN RELATED COMPLAINTS ON APPEAL AS 86-2114 PETITIONER AS PLAINTIFF SPECIFICALLY ALLEGES THAT:

42 USC 1983 Provides white persons who are not members of the American Dental Association the same protection from acts of discriminstion provided to black people in 42USC 1981 which : "provides that all persons within the jurisdiction of the United States have the same right in every state and territory to make and enforce contracts, sue, be parties, give evidence and receive the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by" member dentists of the American Dental Association.(42USC1981)

Furthermore alleged deprivation of Constitutional rights and unlawfull Search

and Seizure of Property including Hasse's records allows this courts original jurisdiction pursuant to 28 USC 1446(b). REMOVAL OF CASES FROM STATE COURTS TO FEDERAL COURTS IS AN ACKNOWLEDGED MODE OF PROTECTING RIGHTS GUARANTEED UNDER FEDERAL CONSTITUTION. Virginia v. Rives(1880)100us 313,25LEd667.

UNDER THE PROVISIONS OF 28 USC 1441(c), the entire case may be removed and this Court may determine all issues therein, including otherwise non-removable separate claims against DEFENDANT DAMASCUS IN STATE SUPERIOR COURT CASE 577605.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by Oath or Affirmation,

and particularly describing the place to be searched, and the persons or things to be seized." U.S.CONST. amend. IV.

"(N)or shall any State deprive any person of life, liberty, or property, without due process of law..."U.S.CONST.

U.S. CONST. amend XIV, 1.

PETITIONER CITED 9th Cir Appeal No. 86-7359 Amster v. United States and quoted the NINTH CIRCUIT REVIEW "Dismissal on basis of mootness denied when there is the likelihood of recurrence of challanged activity" Since microphones are still embedded in the roof of Petitioners office, without his permission,the unlawful surveillance and invasion of privacy rights as well as more staged dental malpractice complaints under color of consumer investigations are likely to continue.

CONCLUSION

LOWER COURT JUDGE JENSEN DIDNOT EVEN READ THE PETITION FOR REMOVAL AS HE FIRST

DISMISSED THE DAY IT WAS FILED BECAUSE HE THOUGHT THAT PETITIONER WAS PLAINTIFF INSTEAD OF DEFENDANT. UPON MOTION FOR RECONSIDERATION DAMASCUS EXPLAINED THAT FACT HOWEVER THE LOWER COURT THEN SUGESTED THAT THE JURISDICTION FOR REMOVAL MUST BE ON THE FACE OF THE PLEADINGS FAILING TO RECOGNIZE. Utah v. Livsey (1970,D.C.Utah) 312 F Supp 1397. "CONCEALMENT OF FACTS AND FRAUD CANNOT deprive PETITIONER the ability to expose the federal nature of the CASE."

STILL FAILING TO RECOGNIZE DAMASCUS AS DEFENDANT, JENSEN DISMISSED PETITION FOR REMOVAL WITHOUT REMANDING IT TO STATE COURT.

DAMASCUS APPEALED THE CASE AND WHEN THE ATTY GEN APPROACHED JENSEN ASKING HIM TO REMAND CASE TO STATE COURT, JENSEN DECEIVINGLY WROTE A LETTER TO THE NINTH CIRCUIT ASKING IF HE COULD CHANGE HIS ORDER YET SAYING HE MADE A "TYPOGRAPHICAL ERROR" HE DID NOT SERVE A COPY TO DAMASCUS AND THE

MOTIONS ATTORNEY WHO ORIGINALLY WROTE THE ORDER FOR A "LIMITED REMAND" EFFECTIVELY DECIDED THE ENTIRE APPEAL IN VIOLATION OF F.R.App.P.22. JUDGE SNEED IGNORRED DAMASCUS PLEADINGS AS A REQUEST FOR AN EXTENTION OF TIME AND DAMASCUS LATER FOUND OUT THAT THE ONLY PERSON THAT READ ANY OF DAMASCUS PLEADINGS WAS THE MOTIONS ATTORNEY APPROACHED BY THE U.S. ATTY. GEN.

Parties proceeding pro se are to be accorced liberal treatment when they attempted to grapple with the intricacies of federal practice. Finnhaber v. Sensenbrenner, D.C.Wis. 1974. 385 F. Supp.406 F.R.C.P. supp. Rule 8 p. 286.

PURSUANT TO Fed.R.App.P.27(c). "a single Judge may not dismiss or effectively determine an appeal or other proceeding."

For a single Judge to approve an Order of a Motions Attorney totally overstepping his authority to determine an entire appeal, above the objections of Appellant.

without any Motions from any Respondants, before the deadline for the Opening Brief, would be such an outrageous abuse of discretion, AND ABUSE OF RULE 22(OUTSIDE F.R.A.P.42(b), that appellant wishes to call attention to the entire court for a Motion for Reconsideration.

RALPH HASSON, MOTIONS ATTORNEY ACTED TOTALLY IN DECEIPT BY REMAND THE APPEAL ON HIS OWN ACCORD, WITHOUT EVEN MEETING ANY OF THE CRITERIA SET FORTH IN 9thCir.RULE 22(page40):

"The general conditions under which a motions attorney may grant a motion are that: (1) NO OPPOSITION to the motion has been recieved; (2) the motion has not been previously denied; (3) the order is expressly subject to reconsideration by a judge if any exception is recieved within 10 days of the entry of the order ; and (4) if the Clerk or motions attorney has any question as to the proper disposition of

the motion, it will be referred to a judge. However Rule 22 only refers to limited extentions of time, substitution of retained council, motions to consolidate, BUT NOT FOR REMANDING AN ENTIRE APPEAL UNDER THE GUISE OF A LIMITED REMAND, WITHOUT EVER SHOWING THE REQUEST MADE BY JUDGE JENSEN. WHEN APPELLANT FIRST RECIEVED THE MOTIONS ATORNEY'S ORDER, APPELLANT HAD NO IDEA OF WHAT "district court's request of June 4,1987 for a limited remand" was refering to. DISTRICT COURT JUDJE JENSEN NEVER SERVED APPELLANT A COPY OF HIS MOTION NOR WAS IF ON FILE AT THE DISTRICT COURT ON JULY 6,1987.

1. NO MOTIONS WERE MADE BY ANY RESPONDANTS AND A MOTION FROM A DISTRICT COURT JUDGE AFTER THE APPEAL HAS BEEN FILED IS TOTALLY IMPROPER.

2. NO CASE PREVIOUSLY DECIDED IN THIS COURT SETS ANY PRESCIDENT FOR HIS ACTION. A SINGLE JUDGE SHOULD NOT APPROVE SUCH AN

ORDER AS IT EFFECTIVELY DISPOSED OF ENTIRE APPEAL. APPELLANT CITES F.RULE App.P.27(c).

AFTER APPELLANTS OBJECTION THAT A SINGLE JUDGE SHOULD NOT DECIDE THE ENTIRE CASE, PRIOR TO APPELLANT FILING AN OPENING BREIF TWO JUDGES NAMES APPEARED ON AN ORDER BUT THE ORDER WAS SIGNED BY NEITHER. YET THE ORDER DID NOT EVEN RECOGNIZE DAMASCUS'S PETITION FOR REHEQARING EN BANC AND COPIES WERE NEVER DISTRIBUTED TO ENTIRE COURT.

The U.S. Department of Health Services is attempting to wait out the Statue of limitations, concerning criminal actions committed by Patty Borgia, a Dental assistent, allegedly planted in Plaintiff's office, to steal and alter records, while restraining Plaintiff's business by turning away cash customers and fraudulently scheduling unwanted Medi-Cal patients.

This Court should not allow Participants of a Federal investigation to file "sham" civil complaints in State

Superior Court without full disclosure of the nature of the ongoing Federally sponsered investigations. Petitioner would not have even seen these patients(HASSE and MUROTSUNE) if his business was not restrained through abused telephone surveillance to limit his business to that of Patients sent soley for the purposes of investigation.

FORCE AND EFFECT OF LOCAL RULES

Considerable deference is accorded to district courts'' interpretation and application of their own rules of practice and procedure, but where court of appeals COMMITS FRAUD, WHILE CONDUCTING HARRASSING INVESTIGATIONS USING COURT CLERKS, UNDER THE GUISE OF JUDICIAL REVIEW OF THE DISTRICT COURT JUDGE and turning an interlockatory appeal for termination of abused surveillance into another investigation of Damascus, in cooperation with respondants 9th Cir 86-8045 yet

attempting to keep all information secret from Damascus, the courts have abused and misconstrued their own rules. REVERSAL is warranted. Smith v. Ford Motor Co., C.A. Wyo. 1980, 626 F.2d 784, THE COURT OF APPEALS HAS HEARD EDITED TAPE RECORDING OF DAMASCUS THROUGH THE MICROPHONES IN DAMASCUS'S OFFICE YET IT WILL NOT REVERSE THE DISMISSAL OF CIVIL AND PRIVACY RIGHTS COMPLAINT WHERE Damascus alleged "The United States District Court for the Nornorn District of California issued court orders for Telephone Surveillance BASED ON FRAUDULENT AFFIDAVITS AND HAS AFFIRMED DISMISSAL OF COMPLAINTS PURSUANT TO 12(b)6 AS FRIVOLOUS ALLOWING BOTH THE DISTRICT COURT AND THE COURT OF APPEALS TO HEAR EXTRANIOUS MATERIALS IN MAKING THEIR DECISION THAT COMPLAINTS AND PETITIONS WERE "FRIVOLOUS" YET DENING DAMASCUS ALL DISCOVERY AND CANCILLATION OF THE INITIAL STATUS CONFERENCE AS ORIGINALLY ORDERED IN

THE COURTS OWN PROCEDURAL ORDERS.

DAMASCUS contends that his PETITION FOR WRIT OF CERTIORARI FOR DISMISSAL OF A PETITION shall be construed, IN PART, as a PETITION FOR REDRESS OF GRIEVENCES. THOMAS JEFFERSON AND THE GREAT FOREFATHERS OF OUR COUNTRY WROTE THE UNITED STATES CONSTITUTION, IN PART TO PROTECT AND PRESERVE THE RIGHTS OF CITIZENS FROM UNDUE REPRESSION, TO GUARANTEE DUE PROCESS OF LAW TO THE COMMON MAN AND NOT JUST TO APPEASE A SEMETIC GAME AMONGST ATTORNEYS.

DATED: NOVEMBER 11, 1987

ALEXANDER DAMASCUS IN PRO PER

FILED AUG 19, 1987

PARTIES

NICHOLOS MUROTSUME REP. BY JEFFREY JANOFF

J. P. RUSSONIELLO, U. S. ATTY. BOSTWICK & ROWE

JUDITH WHETSTINE ASST. U. S. ATTY.

NANCY HASSER. REP. BY SPENCER QUINN,

PATTY BORGIA BY R. TULLIS, AST. CALIF. ATTY. GEN

FILED AUG 19, 1987

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALEXANDER DAMASCUS,)

Plaintiff-Appellant) no. 87-2011

vs.)DC#CV-87-0663-DLJ

PATTY BORGIA, et al.,)Northern California

Defendants-Appellees)

_____) ORDER

BEFORE: HUG and LEAVY, Circuit Judges

Appellant apparently seeks to have the limited remand of this case to the district court set aside. Appellants July 30, 1987 and July 31, 1987 motions are construed togetther as a motion for reconsideration of the court's orders of July 2, 1987, July 10, 1987 and July 31, 1987. So construed, appellants motion is denied.

CATHY CATERSON, CLERK

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIF

D. LOWEL JENSEN

RECIEVED

CATHY CATTERSON, CLERK

U.S. COURT OF APPEALS

JUN 11, 1987

RE: DAMASCUS v. BORGIA, et al

APPEAL No. 87-2011

JUDGE JENSEN TERMED THE FEBRUARY 25, 1987 ORDER AS A CLERICAL ERROR YET DID NOT SEND DAMASCUS A COPY OF THIS UNUSUAL MOTION TO CHANGE IT'S ORDER AFTER AN APPEAL WAS FILED AND THE MOTIONS ATTORNEY WHO ORDERED THE "SHAM" LIMITED REMAND MADE IT APPEAR THAT THE DECISION WAS IN FAVOR OF APPELLANT WITHOUT DISCLOSING THE NATURE OF THE LIMITED REMAND IN IT'S ORDER. RALPH HASSON VIOLATED F.R.C.P. RULE 22, FOLLOWED BY JUDGE SNEEDS VIOLATION OF RULE 27(c). DAMASCUS'S PETITION FOR REHARING EN BANC WAS NEVER DISTRIBUTED TO ALL ACTIVE JUDGES AND THE SIGNATURE OF CIRCUIT COURT JUDGE HUD DID NOT APPEAR ON THE COPY ORIGINALLY SENT.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALEXANDER DAMASCUS,)

Plaintiff-Appellant) no. 87-2011

vs.)DC#CV-87-0663-DLJ

PATTY BORGIA, et al.,)Northern California

Defendants-Appellees)

_____) ORDER

BEFORE: HUG and LEAVY, Circuit Judges

Appellant apparently seeks to have the limited remand of this case to the district court set aside. Appellants July 30, 1987 and July 31, 1987 motions are construed togetther as a motion for reconsideration of the court's orders of July 2, 1987, July 10, 1987 and July 31, 1987. So construed, appellants motion is denied.

CATHY CATERSON, CLERK

FILED JULY 10, 1987

CATHY CATERSON, CLERK

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALEXANDER DAMASCUS,)

Plaintiff-Appellant) no. 87-2011

vs.)DC#CV-87-0663-DLJ

PATTY BORGIA, et al.,)Northern California

Defendants-Appellees)

_____) ORDER

BEFORE: SNEED, Circuit Judge

Appellant has filed OBJECTION OF LIMITED REMAND, AND MOTION FOR RECONSIDERATION TO THE JULY 2, 1987 ORDER apparently for an extention of time OR CONTINUANCE for the HEARING WITH ORAL ARGUMENT SET FOR JULY 17, 1987. THE series of repetitive motions with respect to this appeal ARE DENIED. (THE COURT APPARENTLY CONFUSED CASE 87-2011 WHERE DAMASCUS IS DEFENDANT AND PETITIONER, WITH APPEAL 86-2114 IN WHICH DAMASCUS AS APPELLANT WAS PLAINTIFF.)

FILED JULY 31,1987

CATHY CATERSON,CLERK

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALEXANDER DAMASCUS,)

Plaintiff-Appellant) no. 87-2011

vs.)DC#CV-87-0663-DLJ

PATTY BORGIA,et al.,)Northern California

Defendants-Appellees)

_____) ORDER

BEFORE: SNEED, Circuit Judge

Appellant has filed a series of repetitive motions with respect to this appeal. Appellant's motions of July 6, 7 and 9 all seek differing forms of relief from the court's order of July 2, 1987, which granted the district court's request for a limited remand of the case. These motions are construed together as a motion for reconsideration of the court's July 2, 1987 order. So construed, the motion for reconsideration is denied.

Appellant's June 29, 1987 motion and one of appellant's July 6 motions also seek an extension of time in which to file a further response to the court's July 2, 1987 order. That request is denied.

One of appellant's July 6 motions seeks a copy of the district court's request for a limited remand. That request is granted. The Clerk shall forward a copy of the district court's letter of June 11, 1987 to appellant.

One of appellant's July 7 motions seeks an extension of time in which to file his opening brief. That request is denied as unnecessary. Briefing is suspended pending expiration of the limited remand and the filing of a supplemental certificate of record by the district court. Upon receipt of the supplemental certificate of record, the Clerk shall set a new date for appellant's opening brief.

(UNSIGNED)

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ALEXANDER DAMASCUS, D.D.S., Petitioner,	)NO. C87-0663DLJ
v.	)ORDER REGARDING
PATTY BORGIA, et al.	)MOTIONS FOR RE-
RESPONDENTS.	)CONSIDERATION OF
	)ORDER DISMISSING
	)REMOVAL PETITION

Petitioner has filed numerous duplicative Motions for Reconsideration of the Order Dismissing Petition to Remove. By order dated March 12, 1987 this Court denied the first of these motions to come its way. The reasoning set forth in that Order applies to and disposes of petitioner's successive motions. Petitioner is hereby directed to file no more motions for reconsideration of the removal issue.

IT IS SO ORDERED.

DATED: March 13, 1987 (SIGNED)

D. Lowell Jensen

United States District Judge

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ALEXANDER DAMASCUS, D.D.S.	NO. C87-0663DLJ
Petitioner,	ORDER
v.	
PATTY BORGIA, et al.	
RESPONDENTS.	

Plaintiff filed this action in Superior Court and then removed it to Federal Court. Pursuant to 28 U.S.C. 1441 cases may be removed by defendant only. Accordingly, this petition is dismissed. Plaintiff may seek leave to file a separate federal action as required by Judge Ingram's order of November 12, 1985.

IT IS SO ORDERED.

DATED: February 24, 1987 (SIGNED)

D. Lowell Jensen

United States District Judge

FILED JUL 2, 1987

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALEXANDER DAMASCUS,)

Plaintiff-Appellant) no. 87-2011

vs.)DC#CV-87-0663-DLJ

PATTY BORGIA, et al.,)Northern California

Defendants-Appellees) (San Francisco)

_____) ORDER

In accordance with the district court's request of June 4, 1987 for a limited remand, the case is remanded to the district court to allow the court to correct a clerical error in its order of February 25, 1987.

This order is subject to reconsideration by a judge if any opposition is filed within ten (10) days of the entry of the order.

For the Court:

Ralph H. Hasson

Motions Atty./Deputy Clerk

Local Rule 22

FILED MARCH 12, 1987

WILLIAM WHITTAKER, CLERK

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ALEXANDER DAMASCUS, D.D.S.	NO. C87-0663DLJ
Petitioner,	ORDER
v.	
PATTY BORGIA, et al.	
RESPONDENTS.	

Pro Se petitioner Alexander Damascus moves for reconsideration of this court's February 25, 1987 Order, dismissing the removal petition. It now appears from petitioner's moving papers that petitioner is defendant in two of the state court actions which he seeks to remove. For the reasons set forth below the court finds that removal is improper and thus denies the Motion for Reconsideration. In all petitioner seeks removal of seven state

court actions. In two of these, San Jose Superior Court no.'s 577605 and 618151 petitioner is named defendant . It would appear that petitioner himself filed the other five actions in San Jose Superior Court no.'s 545697, 566220, etc. He evidently seeks removal of these five actions on the theory that they are related to the two actions filed against him. He also urges that some or all of these state actions are related to three federal actions he has previously filed. C8520209WAI C8620234RPA. This theory cannot support removal jurisdiction. The removal statute by 28USC 1441(a) only if it is of the type that could only have originally been brought in district court HARPER V. SAN DEIGO 764 F2d 663, 666 9TH (1985). defendant must therefore demonstrate either a diversity of citizenship or a federal question. here

FILED JULY 10, 1987

CATHY CATERSON, CLERK

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALEXANDER DAMASCUS,)

Plaintiff-Appellant) no. 87-2011

vs.)DC#CV-87-0663-DLJ

PATTY BORGIA, et al.,)Northern California

Defendants-Appellees)

_____) ORDER

BEFORE: SNEED, Circuit Judge

Appellant's emergency motion for stay of mandate is denied as unnecessary. Appellants objection of the courts order of July 2, 1987 granting a limited remand in appeal 87-2011, that order has no bearing on these appeals 86-2114 & 86-2231 which are scheduled for oral argument on friday July 17, 1987 at 9:00am. (UNSIGNED)

(THE COURT CONFUSED appeal No. 87-2011, WHERE DAMASCUS IS DEFENDANT AND PETITIONER, WITH APPEAL 86-2114 IN WHICH DAMASCUS WAS PLAINTIFF.)

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

THE CHAMBERS OF D. LOWELL JENSEN

UNITED STATES DISTRICT COURT

June 9,1987 Clerk of the Court-9th Circuit

Regarding Alexander Damascus v. Patty

Borgia, et al.

To the Clerk of the Court, it has come to the court's attention that it's order of February 25, 1987 in the above mentioned that it contains a clerical error. Whereas it was the court's intention to remand this action to state court as improperly removed pursuant to 28USC 1447(c)

The order included the words the petition to remove is "dismissed" but ommitted the word "remand". The court is currently without jurisdiction of this action. Pursuant to Rule 60(a) the court requests a temporary remand of this action to correct a clerical mistake" and order the action remanded to state court.

Lowell Jensen

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of Santa Clara County. I am over eighteen years of age and not a party to the within action;

My residence address is 3076 CARLETON PL SANTA CLARA, CALIF.

ALEXANDER DAMASCUS D.D.S) NO.87-2011
APPELLANT/PETITIONER)
vs)PETITION FOR WRIT OF CERTIORARI
PATTY BORGIA et al)
RESPONDANANT)
)

said action by placing a true copy thereof enclosed in a sealed envelope, addressed as follows:

J. P. RUSSONIELLO, U.S. ATTY.
SAMUEL WONG, ASST. U.S. ATTY.
JUDITH WHETSTINE, ASST. U.S. ATTY.
280 SOUTH 1ST. STREET
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100 N. ALMADEN AVE.
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CLERK, U.S. COURT OF APPEALS
P.O. BOX 547
SAN FRANCISCO, CALIF. 94101-547

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DON BALLAH
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UNITED STATES SUPREME COURT
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WASHINGTON D.C. 20547

I CERTIFY UNDER PENALTY OF PERJURY THAT THE ABOVE IS TRUE AND CORRECT. EXECUTED ON ~~NOV 12~~ DEC 23, 1987, 1987 AT SAN JOSE, CALIFORNIA.

Anna Damascus

Y

ANNA DAMASCUS